

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD DWAYNE GRAY,

Defendant-Appellant.

UNPUBLISHED

May 15, 1998

No. 200226

Berrien Circuit Court

LC No. 96-001254-FH

Before: Hoekstra, P.J., and Jansen and Gage, JJ.

PER CURIAM.

Defendant was convicted of possession with intent to distribute imitation controlled substances, MCL 333.7341(3); MSA 14.15(7341)(3), and resisting and obstructing arrest, MCL 750.479; MSA 28.747, following a two day jury trial. He was sentenced to one year of probation, with the sole condition that he serve 365 days in the county jail. He appeals as of right and we affirm.

Defendant's only argument is that there was insufficient evidence to sustain his convictions. In reviewing the sufficiency of the evidence, this Court must view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).

Taken in a light most favorable to the prosecution, there was sufficient evidence to sustain the conviction of possession with intent to distribute imitation controlled substances. The evidence in this case was that defendant was found by a police officer to be in possession of a bag containing at least twenty clear plastic ziplock bags that were empty, in addition to thirteen clear packages containing one "rock" each of a substance that was made to look like crack cocaine, but was actually wax.

Further, the forensic expert, Dewey Murdick, testified that when crack cocaine is intended to be sold in a typical street sale, it is packaged in a small plastic seal, like those found on defendant, and each seal usually contains one rock. He also testified that the bags containing each "rock" of wax were heat sealed, as is commonly done in cases where crack is going to be sold. Although defendant testified that he had just picked up the bag by an apartment building, he acknowledged that he looked in the bag

and saw the seals, and was able to conclude that there was probably crack cocaine inside the paper towel that was found to contain the “rocks” of wax. Consequently, defendant knew he was in possession of a large amount of the substance and many plastic baggies that he knew were commonly used for delivery of crack cocaine.

This evidence is sufficient to show that defendant possessed an imitation controlled substance with the intent to distribute it. *People v Hubbard*, 209 Mich App 234; 530 NW2d 130 (1995); *People v Ray*, 191 Mich App 706; 479 NW2d 1 (1991).

Next, taken in a light most favorable to the prosecution, there was sufficient evidence to sustain defendant’s conviction of resisting and obstructing arrest. The elements of this crime are: (1) the defendant must have resisted arrest; (2) the arrest must be lawful; (3) the person making the arrest must have been at the time an officer of the law; (4) at the time of the arrest, the defendant must have intended to have resisted such officer; (5) at the time of the arrest, the defendant must have known that the person he was resisting was an officer; and (6) at the time of the arrest, the defendant must have known that the officer was making an arrest. *People v Julkowski*, 124 Mich App 379, 383; 335 NW2d 47 (1983).

The evidence in this case was sufficient to meet those elements. The arresting officer, who was in uniform, testified that when he was called to the scene where there was a breaking and entering of a Ford Escort in progress at Leroy’s Body Shop, he was given a description of the suspect as a black male. The officer stated that he arrived at the scene approximately two minutes later and saw only one person in the lot – a black male matching the description that had been given over the radio – in the vicinity of the Ford Escort. The officer testified that he requested defendant to stop, but defendant continued to walk away. The officer then caught up to defendant and defendant pushed him with both hands in the chest and ran in a northeast direction. The officer recovered his balance and chased defendant, advising him that he was a police officer and that defendant was under arrest for assaulting a police officer. Further, there was a valid arrest given the fact that the officer had a report of a breaking and entering into a car and there was only one individual in the parking lot when the officer arrived a few minutes later. Additionally, defendant’s actions of pushing the officer in the chest and trying to elude him lend further support to a legal arrest.

This evidence is sufficient to establish the elements of resisting and obstructing arrest.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Kathleen Jansen

/s/ Hilda R. Gage